U.S. Department of Homeland Security
United States Coast Guard

Office of Administrative Law Judges, Seattle
United States Coast Guard

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5720
December 10, 2021

Chloe Anneliese Lucero
1320 Main Street
Oroville, WA 98844

RE: DHS FOIA APPEAL 2021-HQAP-00161

Dear Ms. Lucero:

This letter is in response to your appeal regarding FOIA requests 2021-IAFO-00203, in which you sought information about yourself. The Office of Intelligence and Analysis (I&A) neither confirmed nor denied that such records may or may not exist, pursuant to 5 U.S.C. § 552(b)(3). In your appeal, you argued that the United States government has already released records to the Government of Canada that would be considered responsive to this request, and that the FBI has also revealed the existence of responsive records.

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing the FOIA appeals for the Department of Homeland Security General Counsel's office. Therefore, the Office of the Chief Administrative Law Judge will be rendering the official appeal decision on behalf of the Department of Homeland Security.

After a thorough review of the record provided to me in connection with these appeals, I am **UPHOLDING** I&A's response to your request. I&A has reasonably determined that confirming or denying the existence or non-existence of responsive records would cause cognizable harm, thus I find the use of a *Glomar* response justified. Courts have held that requesters "can overcome a *Glomar* response by showing that the agency has already disclosed the fact of the existence (or nonexistence) of responsive records, since that is the purportedly exempt information that a *Glomar* response is designed to protect." *Am. C.L. Union v. C.I.A.*, 710 F.3d 422, 427 (D.C. Cir. 2013). However, different agencies maintain control of different types of documents, and any disclosures the FBI may have made have no bearing on whether responsive documents exist within I&A's control. Here, there is no evidence that I&A has ever released any documents that would be considered responsive to your request.

This decision is the final action of the Department of Homeland Security concerning your FOIA requests 2021-IAFO-00203 and 2017-IAFO-00049, and the corresponding DHS FOIA Appeal 2021-HQAP-00161. While a comprehensive review of your appeal was made, you may seek judicial review of this decision pursuant to 5 U.S.C. §552(a)(4)(B) in United States District Court for either: 1) the district where you reside; 2) the district where the agency records are situated; or 3) the District of Columbia.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. Please note, OGIS does not have the authority to handle requests made

under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Sincerely,

Heather L. MacClintock
Attorney Advisor
United States Coast Guard

Copy: Eric A. Neuschaefer, Senior Director, FOIA Litigation, Appeals, Policy, and Training (Acting)
Sent: Sent electronically to the above address.